

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

FC 2001-006342

09/23/2010

HON. PAMELA GATES

CLERK OF THE COURT

E. Toledo

Deputy

IN RE THE MARRIAGE OF
CYNTHIA LEE THIMMESCH

TERI D MCCALL

AND

PETER ALLAN THIMMESCH

PETER ALLAN THIMMESCH
11337 STONEHOUSE PL
POTOMAC FALLS VA 20165

FAMILY COURT SERVICES-CCC

RULING

An evidentiary hearing in this matter was held on August 27, 2010. The Court will not repeat the history of this matter other than to state that the parties have two minor children: Andrew (DOB: 6/3/93) and Rebecca (DOB: 2/27/1996). In connection with the parties' Decree of Dissolution, Father was obligated to pay child support to Mother in the amount of \$2,729.00 per month. Father's child support obligation was subsequently modified to \$1,704.28 per month, with an effective date of August 1, 2008.

Following a temporary orders hearing in October 2009, the Court ordered, on a temporary basis, that Andrew was allowed to relocate to Father's home in Virginia and attend Dominion High School for the 2009-2010 academic year. Father filed a Petition to Modify a Support Order on or about January 25, 2009. Father testified that he served Mother's counsel on or about January 25, 2009.

Following a hearing held on March 12, April 12, and April 15, 2010, the Court ordered that Father was allowed to relocate Rebecca to Virginia. Mother retained physical custody of Rebecca until June 30, 2010. Thereafter, Father had Court-ordered parenting time with Rebecca from July 1, 2010 through July 31, 2010. Mother subsequently had Court-ordered parenting time with Rebecca from August 1, 2010 through August 14, 2010. Mother had Court-ordered

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parenting time with Andrew from August 10, 2010 through September 3, 2010. Following the summer of 2010, the Court entered a long-distance parenting schedule, which is modified slightly herein. The modification is made as a result of the Court's erroneous conclusion regarding the duration of the children's school summer vacation and fall break. As a result of this error, the Court modifies the parties' parenting time schedule slightly to reflect the intended parenting time schedule more accurately.

**CHILD SUPPORT MODIFICATION
FEBRUARY 1, 2010 THROUGH JUNE 30, 2010¹**

THE COURT FINDS, for the purpose of the calculating child support, beginning February 1, 2010 the following monthly income, expenses, and adjustments:

Father's Income	\$17,520.00 ²
Mother's Income	\$6,250.00
Health Insurance Paid by Father	\$113.41
Parenting Time Adjustment	Equal

These findings, and any other relevant financial factor required or allowed to be included by the Arizona Child Support Guidelines, are set forth in the Child Support Worksheet Number 1 dated September 22, 2010 filed herewith and are hereby adopted by this reference. Therefore,

IT IS ORDERED that Father shall pay child support to Mother in the total amount of \$500.00 per month (rounded from \$501.89 per month) for the period from February 1, 2010 through June 30, 2010.

IT IS FURTHER ORDERED that any uncovered or uninsured medical, dental, orthodontic, optical, prescription expense, deductible, and co-pay incurred (which means the service was rendered) between February 1, 2010 and June 30, 2010 shall be paid 75% by Father and 25% by Mother. If one party pays a health-related expense, any request for reimbursement of the other party's share shall be made within 180 days after the date the health-related services are rendered. A request for receipts or other evidence of payment shall be provided by the party seeking reimbursement upon request of the party from whom reimbursement is sought. The party from whom reimbursement is sought shall make such reimbursement, or make acceptable

¹ Mother retained physical custody of Rebecca until June 30, 2010. The Court modified the child support order to reflect the substantial and continuing change in circumstance resulting from Rebecca's move, which occurred on or about July 1, 2010.

² The Court has discretion whether to include a credit for supporting natural or adopted children that are not subject to Court order. The Court purposefully elected to exclude a credit for Father's four children not common to the parties.

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payment arrangements, within 45 days of the request for reimbursement. Both parties shall use their best efforts to obtain services that are covered by the insurance. A party who is entitled to receive reimbursement from the other party for medical costs not covered by insurance shall, upon request of the other party, provide receipts or other evidence of payments actually made.

**CHILD SUPPORT MODIFICATION
COMMENCING JULY 1, 2010**

THE COURT FINDS, for the purpose of the calculating child support, beginning July 1, 2010, the following monthly income, expenses, and adjustments:

Father's Income	\$11,520.00 ³
Mother's Income	\$6,250.00
Health Insurance Paid by Father	\$113.41
Parenting Time Adjustment	68 days

These findings, and any other relevant financial factor required or allowed to be included by the Arizona Child Support Guidelines, are set forth in the Child Support Worksheet Number 2 dated September 22, 2010.

After considering the best interests of the children,

THE COURT FINDS that a strict application of the Arizona Child Support Guidelines in this case is inappropriate or unjust and that the Court has considered the best interests of the children in determining that a deviation of \$498.14 per month from the amount determined under the Guidelines is appropriate to reduce Mother's child support obligation from \$623.14 to \$125.00 per month.

In deviating from the Child Support Guidelines, the Court considered many factors, *inter alia*, the relocation of the children from Mother's primary care and the possibility that Mother may travel to spend time with the children in Virginia as well as Father's voluntary reduction in income.

IT IS ORDERED that Mother shall pay child support to Father in the total amount of \$125.00 per month, commencing July 1, 2010.

All payments shall be made through the Support Clearinghouse through an automatic Order of Assignment issued this date. Mother is advised that until such time as the Order of

³ The Court has discretion whether to include a credit for supporting natural or adopted children that are not subject to Court order. The Court purposefully elected to exclude a credit for Father's four children not common to the parties.

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Assignment becomes effective, and during any time when no Order of Assignment is in place, Mother has an affirmative obligation to pay the child support directly to the Support Clearinghouse. Mother shall immediately notify the Court of any change in her employment by filing a Current Employer Information Sheet.

The obligation for child support terminates when each child attains the age of 18 years or is otherwise emancipated, but in the event any child attains the age of 18 years while attending high school, support shall continue to be provided during the period in which said child is actually attending high school but only until the child reaches 19 years of age. If the parties have more than one child, the amount of child support owed is **not automatically reduced** by the child's share as each child is emancipated; rather the parties **must request a modification** of the child support order in writing and pursuant to the Arizona Rules of Family Law Procedure. Provisions for health insurance and uninsured health expenses for the child, as provided for below, shall be deemed to be additional child support and shall be enforceable as such.

Pursuant to A.R.S. § 25-503(I), the right to receive child support payments as provided herein vests as each installment falls due. Each vested child support installment is enforceable as a final judgment by operation of law.

MEDICAL INSURANCE

IT IS ORDERED that Father shall maintain medical insurance for the minor children. Father shall ensure that Mother is kept informed at all times of the name and address of the insurance provider as well as the policy number. Additionally, Father shall provide Mother with valid insurance cards, policy information, and any updated information changes.

IT IS FURTHER ORDERED that any uncovered or uninsured medical, dental, orthodontic, optical, prescription expense, deductible, and co-pay incurred after July 1, 2010 shall be paid 65% by Father and 35% by Mother. If one party pays a health-related expense, any request for reimbursement of the other party's share shall be made within 180 days after the date the health-related services are rendered. A request for receipts or other evidence of payment shall be provided by the party seeking reimbursement upon request of the party from whom reimbursement is sought. The party from whom reimbursement is sought shall make such reimbursement, or make acceptable payment arrangements, within 45 days of the request for reimbursement. Both parties shall use their best efforts to obtain services that are covered by the insurance. A party who is entitled to receive reimbursement from the other party for medical costs not covered by insurance shall, upon request of the other party, provide receipts or other evidence of payments actually made.

DEPENDENCY EXEMPTION

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Pursuant to Rule 27 of the Arizona Child Support Guidelines, allocation of the dependency exemption between the parties generally proportionate to income is appropriate. Based thereon,

IT IS ORDERED that Mother may claim the dependency exemption for Andrew in every even-numbered year. Father may claim the dependency exemption for Andrew in every odd-numbered year. Father may claim the dependency exemption for Rebecca in every year. If the party entitled to the exemption does not realize a financial benefit from the exemption for a given tax year, the other party shall be entitled to claim the tax exemption for that tax year.

IT IS FURTHER ORDERED that Mother's right to claim the exemption in any given year is conditioned upon payment by Mother by December 31st of the total Court-ordered monthly child support obligation for that calendar year and any Court-ordered arrearage payments due during the calendar year for which the exemption is to be claimed.

EXCHANGE OF INCOME INFORMATION

IT IS ORDERED that the parties shall exchange income information every twenty-four (24) months from the date of the entry of this Order for so long as a child support obligation is in place. Said financial information shall include, but is not limited to: personal tax returns with all schedules, affidavits of financial information, earning statements, and other such documentation necessary to establish or prove the income of either party. In addition, at the time of the exchange of financial information, the parties shall also exchange residential addresses and the names and addresses of their respective employers.

ATTORNEYS' FEES AND COSTS

Mother made a request for attorneys' fees and costs. After considering the financial resources of both parties and the reasonableness of the positions each party has taken throughout the proceeding,

IT IS ORDERED that Father shall pay \$6,000.00 of Mother's reasonable attorneys' fees and costs.

IT IS FURTHER ORDERED that not later than thirty (30) days after the date of this Order, counsel for Mother shall submit all necessary and appropriate documentation to support an application for an award of attorneys' fees and costs, including a *China Doll* affidavit and a form of order. If Mother's counsel fails to submit the application within 30 days, no fees or costs will be awarded.

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CORRECTION OF ERROR IN PARENTING TIME SCHEDULE

As mentioned above, the Court entered a parenting time schedule under the erroneous belief that the minor children were released for fall break and enjoyed 9 weeks of summer vacation each year. The Court corrects Paragraphs 1 through 3 on Pages 5 through 6 of the Court's May 20, 2010 Order to read as follows:

IT IS THEREFORE ORDERED:

1. This Court finds that it is in the best interests of the parties' minor child to award Mother and Father joint legal custody of their two minor children.
2. Father shall be the primary residential parent of both Andrew and Rebecca.
3. Mother shall be entitled to the following parenting time with Andrew and Rebecca:
 - a. In 2010, Mother shall have parenting time with Andrew from August 10, 2010 until September 3, 2010.
 - b. In 2010, Mother shall have parenting time with Rebecca until June 30, 2010. Father shall have parenting time with Rebecca from July 1, 2010 until July 31, 2010. Mother shall again have parenting time with Rebecca from August 1, 2010 until August 14, 2010.
 - c. In 2011 and every summer thereafter (until Andrew is emancipated), Mother shall have parenting time with the minor children for nine weeks in the summer (starting **three days** after school ends and continuing until **one week** before school begins in Virginia). Mother's parenting time must conclude **one week (7 days)** before Andrew and Rebecca are scheduled to start school in Virginia.⁴

⁴ Mother requested that the Court order the parties to participate in Camp Common Ground. The information submitted by Mother suggests that Camp Common Ground involves the minor children and both parents. At this time, the Court is not ordering that the parties participate in Camp Common Ground. Mother may pursue Camp Common Ground for her and Rebecca and/or Andrew. Further, the Court notes that it may order all the parties to participate in Camp Common Ground (or another camp for high conflict families) in the future if high conflict continues between Mother and Father.

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- d. Mother shall also have parenting time with both children on Thanksgiving break in even-numbered years, beginning Tuesday and continuing until Saturday.
- e. Mother is also entitled to parenting time for one half of the Winter Break. Winter Break is defined to begin on Saturday following Andrew's and Rebecca's release from school for Winter Break and ending on the Saturday immediately prior to the minor children's return to school. Mother will have the first half of Winter Break, which shall include Christmas Eve and Christmas in even-numbered years and Father will have the second the half of the Winter Break in even-numbered years. Father will have the first half of Winter Break, which shall include Christmas Eve and Christmas in odd-numbered years and Mother will have the second the half of the Winter Break in odd-numbered years.
- f. Mother is also entitled to parenting time for Spring Break in **every year**. Spring Break is defined to begin on Saturday following the minor children's release from school for Spring Break and ending on the Saturday immediately prior to the minor children's return to school.
- g. Father shall pay for 85% of the cost of the children's airfare. Mother shall pay for 15% of the cost of the children's airfare.⁵

IT IS FURTHER ORDERED signing this Minute Entry as a formal written order of the Court pursuant to Rule 81, Arizona Rules of Family Law Procedure.

/s/: PAMELA GATES

THE HONORABLE PAMELA GATES
JUDICIAL OFFICER OF THE SUPERIOR COURT

All parties representing themselves must keep the Court updated with address changes. A form may be downloaded at: <http://www.superiorcourt.maricopa.gov/SuperiorCourt/Self-ServiceCenter>.

⁵ The Court notes that Father requested that the Court re-visit allocation of transportation costs. Father's request is denied.